95-187

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Supreme Court, U.S.
FILED
SEP 1 1995
CLERK

CASE NO. 94-7053

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM 1994

William Patrick Pointon, Jr., Petitioner

v.

City of Choctaw, Oklahoma; State of Oklahoma, ex rel.; Oklahoma State Department of Health, Respondents

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

SUPPLEMENT TO THE BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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A. Matters presented not available at the time of the last filing of the City of Choctaw, State of Oklahoma, and the State of Oklahoma, ex rel. the State Department of Health and presented in response to Petitioner Pointon's Petition for Writ of Certiorari.

This response is presented as a response to Petitioner's "Petition for Writ of Certiorari" (hereinafter "Writ) and as a supplement to Respondents' "Brief in opposition to the Petition for Writ of Certiorari to the United State Court of Appeals for the Tenth Circuit," (hereinafter, "Opposition Brief," incorporated by reference in its entirety) filed prior to the filing of Petitioner's Writ, but filed after and in response to Petitioner's "Notice of Appeal." This issue was previously addressed in the Opposition Brief, Part VII. This supplemental document represents an attempt by Petitioners to respond to the unusual filing sequence as expeditiously and efficiently as possible.

B. Misstatements of Fact and Law Contained in Petitioner's Writ. The only question for consideration before this Court would involve whether there was abuse of discretion by the lower Court in denying attorney fees to Petitioner.

Petitioner's Brief is replete with unsubstantiated and argumentive factual allegations and conclusions regarding the historical activities of the parties which the Respondents categorically deny, and, more important to the instant matter, are totally irrelevant to the issues before this Court. These, or similar accusations and allegations, were not found to be supported by the evidence in any of the numerous lower Courts in which Petitioner has pled his case and are not properly before this Court as a retrial of factual issues unrelated to issues involving dischargeable debts and attorney fees brought in the bankruptcy proceeding from which this appeal arises. The facts of the case have been set forth in the Order of the Tenth Circuit (Pet.App.)(A and B) and in the Opposition Brief. The Respondents respectfully request that Petitioner's extraneous "Questions Presented" and pejorative narrative be disregarded. On the grounds that they are irrelevant and improperly presented as a part of this proceeding and, therefore, do not require any further response from Respondents, the Respondents will not address

these accusations any further unless requested to do so by this Court.

C. Concise Statement of the Case.

The lower Court did not abuse its discretion in denying an award of attorneys fees to Petitioner.

Petitioner appealed to the Tenth Circuit from the denial of attorney's fees by the Bankruptcy Court which stated that it could not find that Respondents' appeal was "frivolous, vexatious or in bad faith." The Tenth Circuit affirmed this finding. Petitioner then requested rehearing with suggestion for rehearing in banc. Concluding that the original disposition was correct, members of the hearing panel denied the petition on its merits and the suggestion for rehearing in banc. Therefore, even though Petitioner requests that this Court impose sanctions and compensatory damages, the only issue which could be properly before this Court involves the Court's denial of attorney fees to Petitioner. This issue has been addressed by Respondents in their Opposition Brief, although the Petitioner had not at that time filed his Writ.

D. Argument

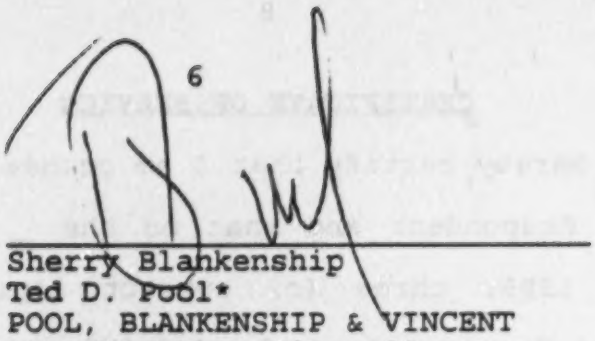
The lower Court did not abuse its discretion in denying attorney fees to Petitioner.

Petitioner has presented cases involving egregious circumstances in which attorney fees were awarded, proffering the unsubstantiated argument that they are factually analogous to the instant case. Petitioner's argument is unavailing. There is no evidence whatsoever in the instant case to indicate any similarities between the actions of the Respondents and the persons or circumstances in the cases submitted by Petitioner. In the instant case, the lower Courts specifically determined that they could not find that Respondents had acted frivolously, vexatiously, or in bad faith. The Courts found that whether injunctive relief is a claim as defined in the Bankruptcy Code is a debatable issue, and that Pointon himself had raised the issue of dischargeability in his declaratory judgment action and was, therefore, prevented from appealing the issue through the invited error doctrine. The City of Choctaw and the State of Oklahoma were properly performing

their obligations to ensure and protect the public health, safety, and well fare fromt he enviromental problems caused by Panton's lagoon which the City never accepted. There actions do no fall within the categories for which attorney fees can be awareded. Clearly the lower Court did not abuse its discretion in denying attorney fees to Petitioner Pointon. Respondents respectfully request that Petitioners' Writ be denied.

E. Conclusion

For the reasons stated herein, the Respondents respectfully request that this Court dismiss and deny Petitioner's Petition for Writ of Certiorari.



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CERTIFICATE OF SERVICE

I, hereby certify that I am counsel of record for the Respondent and that on the _____ day of August, 1995, three (c) correct copies of the foregoing Supplement to the Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit and Reply to the Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit were mailed, postage prepaid, to the following: Mr. William Patrick Pointon, Jr.
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